

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10497

164

WALTER C. PLUMMER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

GEORGE MORRIS FAY,
United States Attorney.
ARTHUR J. McLAUGHLIN,
JOSEPH M. HOWARD,
RICHARD M. ROBERTS,
Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED MAY 16 1950

Joseph W. Stewart

CLERK

INDEX

	Page
Counterstatement of the case.....	1
Statutes.....	3, 4
Summary of argument.....	4
Argument.....	4
Conclusion.....	7

TABLE OF CASES

<i>Collins v. United States</i> , 65 F. 2d 545, 547 (C. C. A. 5) (1933).....	7
<i>Ladrey v. United States</i> , 81 U. S. App. D. C. 127, 155 F. 2d 417 (1946) ..	7
<i>Mazey v. United States</i> , 30 App. D. C. 63 (1908).....	7
<i>Nelson v. United States</i> , 28 App. D. C. 32, 37 (1906).....	5
<i>Warde v. United States</i> , 81 U. S. App. D. C. 355, 158 F. 2d 651 (1946) ..	6

OTHER REFERENCES

D. C. Code of 1940:	
§ 22-1505.....	5
§ 22-1506.....	5

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10497

WALTER C. PLUMMER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On April 8, 1949, appellant was indicted for violation of the gambling laws of the District of Columbia. On November 30, 1949, appellant was found guilty of setting up a gaming table and of accepting a bet. On December 23, 1949, appellant was sentenced to a term of four months to twelve months and execution of this sentence was suspended and appellant was placed on probation.

Wilfred D. Barrett was called as the first government witness (R. 18). Witness Barrett testified that on March 17, 1949, he went to Hamel's Restaurant with one Edith Wildrick for lunch. Barrett stated that while there they had a scratch sheet on their table and that appellant walked up and said, "Top horse came in." After this they ordered lunch. Barrett testified that then Edith Wildrick asked appellant if he could take a bet and he asked her what horse she wanted to play. She told him she wanted to bet on Busy Whirl which was running in the second race at Gulf Stream and handed him a \$10

bill and asked him to play \$2 to win and \$2 to place on Busy Whirl. Barrett further testified that appellant took the \$10 and turned around and said to a man, "Are you going across the street, Doc?" "Doc" nodded and appellant walked up and gave him the \$10. Barrett stated that in about fifteen or twenty minutes "Doc" came back and handed appellant two \$10 bills and then appellant came over to the table and said the horse had won and gave Mrs. Wildrick the two \$10 bills and asked her for \$2 which she gave him.

Barrett testified that on March 23, 1949, he and Mrs. Wildrick returned to Hamel's restaurant and that this time Mrs. Wildrick asked appellant if anyone was there to take a bet and he said that there was not. Barrett stated that shortly after that a man known as F. B. came into the restaurant and that then appellant came over and said, "What is the name of that horse you wanted to play?" Barrett said he thought it was too late to bet on that horse and that then Mrs. Wildrick choose the horse Unapproachable and gave appellant the money. Appellant then went to F. B. and gave him the money and said something to him.

Barrett further testified that on March 24, 1949, he went to Hamel's alone to eat. After lunch he said he gave appellant a \$5 bill and asked him to bet \$3 on a horse for him. Appellant said, "All right." Barrett stated that soon thereafter F. B. came in and appellant walked up to him and spoke to him and handed F. B. the money.

Edith Wildrick was called as the next government witness (R. 104). Her testimony was substantially the same as Barrett's, except that she did not testify to the transaction on March 24, 1949, when Barrett went to Hamel's alone.

Appellant took the stand in his own defense and stated that he was employed at Hamel's restaurant as a waiter and had been employed there since 1935 (R. 326). He testified that on the 17th of March 1949 this couple came in and had lunch. He stated that the girl asked if he knew who won a certain race and he told her he did and told her who won the race. He testified that she later said she would like to play a certain horse and asked him if he could play it for her. He then testified that he said, "No, I can't play it for you because I am not

a bookmaker. There is some customer around here who can get it up for you. And as a favor, I will ask him." He stated he then asked "Doc" if he knew where he could place a bet for him for this lady and that "Doc" said he thought he could. "Doc" told him to get the money and he got a \$10 bill from her. Appellant testified then that "Doc" took the money and left the restaurant and returned in about ten minutes and gave him \$6 change for the lady. He stated that "Doc" went out again and came back and said that the lady's horse had won and gave him two \$10 bills and said give them to her and get \$2 change, which he said he did.

Appellant further testified that on March 23, 1949, he told the same couple that he could not take any bets. He stated that he said, "There is nobody around here that can take a bet there are no customers in here that I can ask personally." Appellant then testified that he took money from Mrs. Wildrick on that day for the purpose of making a bet and that he did this only as an accommodation for her. He said he did not give the money to a man as the others had testified, but to a lady whom he knew and who would take the bet some place and make it for her.

Appellant further testified that Barrett came to the restaurant on a third occasion alone and asked him to bet \$3 on a horse named Plucky Marge in the first race at the Fair Grounds. Appellant stated that he told Barrett he could not get the bet up and that Barrett said, "That is all right. Just keep the money. If somebody comes by, give it to him. If they don't come by, that is still O. K." Appellant testified the money never did get to anybody.

STATUTES

Title 22, Section 1504, D. C. Code of 1940: Gaming—Setting up gaming table—Inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place on land or water, for the purpose of gaming, or gambling device commonly called A B C, Faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and

designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than five years (Mar. 3, 1901, 31 Stat. 131, ch. 854 § 865).

Title 22, Section 1507, D. C. Code of 1940; "Gaming table" defined.

All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of sections 22-1504 to 22-1506; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 868).

Title 22, Section 105, D. C. Code of 1940: Persons advising, inciting, or conniving at criminal offenses to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be (Mar 3, 1901, 31 Stat. 1337, ch. 854, § 908).

SUMMARY OF ARGUMENT

There was ample evidence to support the verdict of the jury. It is admitted that appellant took bets on horse races from witnesses Wildrick and Barrett. Jury was justified in convicting appellant on theory he was aider and abettor.

ARGUMENT

Appellant contends that he was merely accommodating the witnesses Barrett and Wildrick when he took horse race bets from them and that therefore he is not guilty of the charge (Br.

3). In essence this is an argument that there was not ample evidence to support the verdict of the jury. Appellant admitted from the witness stand that he accepted the horse race bets from the witnesses Barrett and Wildrick. He contends that in view of his explanation that he took the bets only to accommodate the witnesses he is not guilty of the charge of violating Section 1504 of Title 18 of the D. C. Code of 1940. The setting up and keeping a gaming place in the District of Columbia for the purpose of betting upon the results of horse races is embraced within the prohibitions of the District of Columbia gaming statute.¹ The offense is made out by a showing of one violation. As stated in *Nelson v. United States*, 28 App. D. C. 32, 37 (1906); where similar language of § 22-1505² was construed: "Had the Government shown that the defendant had once knowingly permitted gaming on premises owned or occupied by him and at the time in his possession or control, it would have been sufficient to support a conviction. * * * To knowingly permit an offense of this nature to be committed once is clearly sufficient. There would have been no reason for Congress to provide that the act should not be punished unless it was repeated." The same conclusion is indicated by the provision of § 22-1507,³ that "the courts shall construe said section [§§ 22-1504, 22-1506] liberally so as to prevent the mischief intended to be guarded against." See

¹ Act of Mar. 3, 1901, 31 Stat. 1331, c. 854, § 865, D. C. Code (1940 ed.) Tit. 22, § 1504. *Beard v. United States*, 65 App. D. C. 231, 82 F. 2d 837, certiorari denied, 298 U. S. 655, 56 S. Ct. 675, 80 L. Ed. 1382; *Nuckols v. United States*, 69 App. D. C. 120, 99 F. 2d 353; *Sesso v. United States*, 77 U. S. App. D. C. 35, 133 F. 2d 381.

² § 22-1505. Permitting gaming table or device to be set up. Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot or other premises to him belonging or by him occupied or of which at the time he had possession or control, shall be punished by imprisonment in jail for not more than one year or by a fine not exceeding five hundred dollars or both (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866).

³ § 22-1507. "Gaming table" defined. All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of sections 22-1504, 22-1506; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against (Mar. 3, 1901, 31 Stat. 1331, ch. 854 § 868).

also *Warde v. United States*, 81 U. S. App. D. C. 355, 158 F. 2d 651 (1946).

To allow appellant to escape punishment by claiming he was merely accommodating customers would amount to a miscarriage of justice. The statute provides that the courts shall construe said sections liberally, so as to prevent the mischief intended.⁴ The mischief in the present case is horse race betting. Without the work of the appellant the witnesses would have been unable to place a bet. Therefore, it is seen that in accepting the bet the appellant was providing the means whereby the law was violated. There being no showing that the appellant and the witnesses Barrett and Wildrick were friends it would be reasonable for the jury to believe that the appellant would accept bets from other people who happened to be in the establishment, here a restaurant. In effect all places set up to accept horse race bets are an accommodation for the person placing the bet. It saves him the expense and time of having to go to the track.

Therefore, the defendant was guilty of a violation of the law when he accepted the bets on horse races.

It is plain to see that the jury just did not believe the statements of appellant that he was merely accommodating the witnesses by having someone place the bets for them. This is clear in view of the following instruction by the court:

Thus, if you find that the Government has proved beyond a reasonable doubt that the defendant Plummer knowingly, feloniously and unlawfully, as I have defined those terms, during the the time alleged on one or more occasions, the facilities for a member of the public to bet or wager money on the outcome of a horse race, then you may find the defendant Plummer guilty under Count 1.

By returning a verdict of guilty as to Count 1 the jury rejected appellant's testimony and believed the testimony of the government's witnesses. That testimony in substance was that bets on horse races were placed with appellant and the

⁴ *Ibid.*

government submits that that testimony is sufficient to support a verdict of guilty as to Count 1.

In any event the appellant is guilty of aiding and abetting under the District of Columbia Code.⁵ Appellant testified that he accepted the bets and then handed them over to some one else who actually placed the bets. From this testimony it is seen that what the appellant did made possible the commission of the crime. If it had not been for his actions Barrett and Wildrick would not have been able to make a bet on a horse race. In *Collins v. United States*, 65 F. (2d) 545, 547 (C. C. A. 5) (1933) the court said, "He must be considered as having aided and abetted the commission of the crime if what he did made possible and tended to cause its commission. *Jin Fuey Moy v. United States*, 254 U. S. 189, 41 S. Ct. 98, 65 L. Ed. 214; *Hume v. United States* (C. C. A.), 118 F. 689; *Billingsley v. United States* (C. C. A.), 249 F. 331; *Colbeck v. United States* (C. C. A.), 10 F. (2d) 401; *Cook v. United States* (C. C. A.), 28 F. (2d) 730." See also *Maxey v. United States*, 30 App. D. C. 63 (1908); *Ladrey v. United States*, 81 U. S. App. D. C. 127, 155 F. (2d) 417 (1946).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be affirmed.

GEORGE MORRIS FAY,
United States Attorney.

ARTHUR J. McLAUGHLIN,

JOSEPH M. HOWARD,

RICHARD M. ROBERTS,

Assistant United States Attorneys.

⁵ Title 22, § 105, District of Columbia Code (1940). § 22-105. In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 908).

JOINT APPENDIX

INDEX TO JOINT APPENDIX

	Rec.	Jt. App.
Indictment.....	1	37
Plea.....	3	39
Judgment.....	12	40
Testimony of witnesses:		
Wilfred D. Barrett.....	18	11
Edith Wildrick.....	104	19
Walter C. Plummer.....	326	28

THE UNITED STATES OF AMERICA *vs.* HARRY S. KOPEL
AND WALTER C. PLUMMER

WASHINGTON, D. C.

Monday, November 28, 1949.

The above-entitled cause came on for trial before Honorable
Richmond B. Keech, at 10:00 o'clock a. m.

* * * * *

18 WILFRED D. BARRETT was called as a witness for and
on behalf of the Government and, having been first duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

32 Q. March 17th, you say you went there?

A. Yes, sir.

Q. What time did you arrive at those premises on

33 March 17th?

A. Between 1:30 and 2 o'clock.

Q. Now, the premises we are still talking about are 416
Tenth Street Northwest. You arrived there about 2 o'clock?

A. Yes, sir.

Q. Who were you with, do you recall?

A. Edith Wildrick.

Q. Did you go into the premises on the date; the 17th?

A. Yes, sir.

Q. What happened when you went in the premises at 416
Tenth Street, on March 17th?

A. We both went in and sat at one of the tables, against
the north wall, at one of the tables for two, and ordered lunch,
and I had a scratch sheet with me at the time, and after we
were waiting for lunch, I would bring the scratch sheet out,
and put it on the table, or on my lap, and when the waiter,
known to me at that time only as Dan——

Q. (Interposing.) Do you see him in court here today?

A. Yes, sir.

Q. Will you point him out, please?

A. He is the second man from the left [indicating].

Mr. McLAUGHLIN. The record will show he points to the defendant Plummer.

The COURT. Yes, sir.

* * * * *

34 Q. All right. What happened?

A. He walked up and said, "Top horse came in." Something to that effect, and we had had no conversation with him, and we ordered lunch at that time, and later on when we did have lunch, the young lady with me asked him if he would take a bet, and he said something, "What horse do you want to play?" And she told him what horse, which was Busy Whirl, which was running in the second race at Gulf Stream track that day, and she handed him a \$10 bill, and she asked him to play \$2 to win and \$2 to place on Busy Whirl. He took the \$10 and turned around, and there was a man which he referred to, which Dan, the waiter, referred to, as "Doc," who was standing over near the counter, the front of the counter, where the radio was located, and he said, "Are you going across the street, Doc?" "Doc" nodded, Yes, and then Plummer walked up and handed him the \$10, and said something to him, and "Doc" went out the front door and across the street to in front of Jimmy's, where it looked like he handed the money to a man——

Mr. McKENZIE (interposing). Just a minute. I object to that.

By Mr. McLAUGHLIN:

Q. No; not what it looked like, just what you observed.

A. He handed this money to a man across the street,
35 who I don't know his name, but I always refer to him as F. B., because he resembled Fish in some way, and I would always call him Fish's brother just for purposes of identification. And that was all that happened for the time being. Maybe 15 or 20 minutes later, "Doc" came back into

the restaurant and walked up to Dan, and handed him two \$10 bills. Then Dan came over to our table, and asked the young lady for \$2, which she gave to him, and he handed us the two \$10 bills. He handed the young lady \$20, two \$10 bills, and said the horse had won, which we had played.

Q. Did you hear the radio on the premises that day?

A. Yes, sir.

Q. What news was on the radio, can you recall?

A. Record music and news and race results.

Q. On March 17, do you recall whether or not you saw Mr. Kopel on the premises?

A. I don't remember seeing Mr. Kopel there on the 17th.

Q. On the 17th?

A. No.

Q. Did you have an occasion to go to the premises again?

A. Yes, sir.

Q. When was the next time after March 17th?

A. March 23.

36 Q. What time did you arrive at those premises, 416 Tenth Street Northwest, on March 23 of this year, 1949?

A. About 2 o'clock.

Q. Was there anyone with you that day?

A. Yes, sir; Mrs. Wildrick.

Q. Did you go into the premises?

A. Yes, sir.

Q. What did you do after you went in the premises at 416 Tenth Street Northwest, in the District of Columbia?

A. Once again we sat at one of the tables.

Q. What table did you sit at?

A. It was over against the north wall again, the third or fourth table in front of the restaurant.

Q. What happened, if anything, at that time?

A. We ordered lunch again, and after we were there for a while, the young lady asked Dan if there was anyone there——

Q. By "Dan," you refer to the defendant?

A. Referring to the defendant, Walter Plummer, if there was anyone there to take a bet, and he said, No, there wasn't anyone as yet, and she mentioned she wanted to play this horse, Time

Eternal, I think it was. Nothing was done then, because he claimed there was no one there to take the bet. So, shortly after that, this man known as F. B., who was across the street on this previous day, came in the restaurant, and
 37 went up to the front of the counter where Kopel was standing, was talking to him, and had the scratch sheet on the counter between the two of them, and immediately then Dan came over and pulled up a chair and sat down at the table. He said, "What is the name of that horse you wanted to play?" and I said, "Well, I think it is too late now for that particular race, but I will give you a bet for the third race," and the lady chose the horse Unapproachable, and gave him the money and he immediately walked over to F. B., who was still in conversation with Kopel, and tapped him on the shoulder and said something to him, handed him the money, and walked out, F. B. walked out the door, then went north on Tenth Street, and I lost sight of him.

Q. Did you have occasion to go in there again after the 23rd?

A. Yes, sir; on the 24th.

Q. When was the next time you were there?

A. March 24th.

Q. What time of the day or night did you go in the premises 416 Tenth Street Northwest, in the District of Columbia, on March 24th?

A. Approximately 2 o'clock in the afternoon.

Q. What did you do when you went in the premises on March 24th?

A. Sat down at one of the tables against the north
 38 wall again.

Q. What happened, if anything?

A. I was alone this day, and while I was sitting there, I noticed this man, referred to as Henry Fish, come in, and he was back at the rear of the counter, where the rear cash register is, right in front of the kitchen doors, talking to Kopel, and they had several piles of bills on the counter between them, and I went back to the washroom, and I noticed that Kopel was putting the money in the cash register, and he threw a couple of coins down on the counter and said something like, "That makes fifteen," to Fish. Then I came back to my table, and

pretty soon Plummer came up to me and said, "Would you like to pay your check now?"

I said, "Yes," and he went back somewhere to write it, and when he came back I put a \$5 bill on the table, and asked him to take a bet which I wanted to bet, \$3, which he said, "All right." He repeated the horse to me, and he didn't do anything immediately, but pretty soon this F. B. came in the restaurant, maybe about five minutes after he had taken the money, and he walked up to F. B., said something to him, and handed the money to him, then he came back to my table, and said something to the effect that, "O. K., he is here now."

I waited a short time after that, then I left.

* * * * *

53 The WITNESS. We first come in around ten after two, or 2 o'clock, and Walter Plummer had said that there was no one there to take the bet. Then, about 25 to 3, he came back and said he was here now, and then we thought it was too late to play this horse, so we played it on the second race.

* * * * *

54 Q. You had come in there at 2 o'clock, and it was after you had finished your meal that you called Dan over to your table and asked him about a bet.

A. Yes, sir.

55 Q. Then, later on, and a few minutes after that, you called Dan back to your table, didn't you?

A. Yes, sir.

Q. And asked if anyone could take a bet on the second race; is that right?

A. I said before I didn't remember what race it was, sir.

Q. Does that refresh your recollection that then you asked Dan if anyone could take a bet on the second race, when you wanted to bet \$2 on Time Eternal?

A. Yes, sir.

Q. And is it not a fact that you also said that at that time, Dan looked around the room and out of the window and said there was no one there who could take the bet?

* * * * *

65 Cross-examination by Mr. McKENZIE:

* * * * *

74 A. She asked him if he would take a bet, and she named the horse.

Q. Just what did he say?

A. I think he repeated the name of the horse, and then took her money.

Q. What did he say about a person called Dock, or any
75 other person?

A. He hadn't mentioned Doc.

Q. Now, let me ask you this: The lady asked him if he would obtain a bet for her on a horse, Busy Whirl; is that correct?

A. Yes, sir.

Q. And did she then hand him the money?

A. Yes, sir.

Q. Before he had said anything to Doc at all?

A. Yes, sir.

Q. Now, in your affidavit, I read as follows:

"After we ordered food, after we had ordered food, and it had been served to us by Dan, the young lady asked Dan to come back to the table, and he said he would. Shortly afterwards he came back to the table, and the young lady asked him if he would take a bet. She said she wanted two to win and two to place on Busy Whirl in the second at Gulf Stream. Dan turned around and said to a man known only to me as Doc, 'Doc, are you going across the street?' to which Doc nodded his head Dan then took a \$10 bill from her and walked over to Doc and handed it to him."

Now, does that refresh your recollection as to whether or not Plummer took money from her before or after he talked to the man called Doc?

76 A. Took it before.

Q. Well, is this statement true:

"She said she wanted two to win and two to place on Busy Whirl in the second at Gulf Stream."

A. That is right.

Q. "Dan turned around and said to a man known only to me as Doc, 'Doc, are you going across the street?' to which Doc

nodded his head. Dan then took a \$10 bill from her and walked over to Doc and handed it to him."

A. You mean, had he mentioned Doc prior to the passing of the money; is that your question?

Q. I mean, which statement is true? The statement in the affidavit that he talked to Doc before he took the money, or the statement that you have just made, that he took the money before he talked to Doc at all?

A. Well, it was simultaneous, practically, the passing of the money and his turning around to Doc. I don't think there was any great lapse of time.

Q. Now, on March 23, 1949, did you receive an assignment on that day to go to Hammel's?

A. Yes, sir.

* * * * *

78 Q. And did she then ask him, according to your affidavit, if there was anyone there who could take a bet in the second?

A. Yes; I believe she did say that.

Q. She didn't ask him to take a bet in the second, did she?

A. No, sir.

Q. And he looked around, according to your affidavit, and said there was no one there who could take a bet?

A. That is right, sir.

Q. He did not offer to take any bets from you or from her himself, did he?

A. No, sir.

Q. Did you or Mrs. Wildrick ask him to take and accept a bet himself as a personal proposition?

A. No, sir.

Q. Now, on March 24, 1949, you returned, and this time you were alone; is that right?

A. Yes, sir.

Q. And you ordered a meal, and you had the service you requested?

A. Yes, sir.

Q. And some time later, the defendant Plummer came over to your table, and, according to your affidavit, asked

79 in a low voice, "If I wanted to pay my check"; is that correct?

A. Yes.

Q. He didn't ask you anything else, did he, Mr. Barrett?

A. No, sir.

Q. And what did you say to him?

A. I said, yes, I would pay it.

Q. You wanted to pay the check?

A. Yes, sir.

Q. And then he walked away from the table, that is correct, is it not?

A. Yes, sir.

Q. About that time, you took a \$5 bill from your pocket, did you not?

A. Yes, sir.

Q. You put that on the table?

A. Yes, sir.

Q. And you took a scratch sheet and put that on the table?

A. Yes, sir.

Q. And you drew a circle around a horse called Plucky Marge?

A. Yes, sir.

Q. You asked the waiter how much the bill was, and he said it was \$1.70; is that right?

80 A. Yes, sir.

Q. And you told him that out of the change, you wanted to get up a bet in the sum of \$3 on this horse called Plucky Marge?

A. Yes, sir.

Q. And Dan left the table, and walked up to this unknown man called "F. B."?

A. I don't believe he did it immediately; no, sir.

Q. Well, you did see F. B. come in, did you not?

A. Yes, sir.

Q. And you saw the defendant Plummer talk to him?

A. Yes, sir.

Q. And then the defendant Plummer said this: "O. K., he is here now"?

A. Yes, sir.

Q. And he gave you your change, which amounted to 30 cents; is that correct?

A. Yes, sir.

Q. And you left the place?

* * * * *

104 EDITH WILDRICK was called as a witness by and on behalf of the Government and, having been first duly
105 sworn, was examined and testified as follows:

Direct examination by Mr. McLAUGHLIN:

* * * * *

Q. During the month of January of this year, 1949, where were you employed?

A. At the Department of Justice.

* * * * *

108 Q. Now, did you have occasion to go to those premises, 416 Tenth Street, again, after January 7?

A. Yes, sir.

Q. Can you recall the next date?

A. The next date that I recall is the 17th of March.

Q. The 17th of March. And what time did you arrive at the premises, 416 Tenth Street, on the 17th of March?

A. About five or ten minutes past two.

Q. Were you alone?

A. No, sir.

Q. Who was with you on the 17th of March?

A. Mr. Barrett.

Q. Now, did you enter those premises?

A. Yes, sir.

Q. Tell us what you saw or what you did in premises 416 Tenth Street Northwest, on March 17 of this year, 1949?

A. Mr. Barrett and I had a scratch sheet. After lunch, we looked at it.

Q. Where were you in the restaurant at the time?

A. We were at the table next to the wall, across from the bar.

Q. Now, what did you do?

A. We had a scratch sheet; and we were looking at it. The waiter, our waiter at that time, came over to us and
 109 said—May I refer to my notes?

The COURT. If necessary. Suppose you exhaust her memory, Mr. McLaughlin.

Mr. McLAUGHLIN. Yes.

By Mr. McLAUGHLIN:

Q. You say the waiter came over to your table?

A. Yes.

Q. Did you know the waiter at that time?

A. I knew his name.

Q. What was his name?

A. Dan.

Q. Do you see him in Court here today?

A. Yes, sir.

Q. Will you point at him, please?

A. Over there [indicating].

Mr. McLAUGHLIN. Let the record show she points to the defendant Plummer.

By Mr. McLAUGHLIN:

Q. Now, you say that you had some talk with the defendant Plummer at that time?

A. Yes, sir.

Q. Can you recall what talk you had with Plummer?

A. Concerning what?

Q. Just give us the conversation, what was said either by you or by him.

110 A. We ordered lunch; and I asked—I had a toothache, and I asked what kind of food I could eat for a toothache, and he suggested something to eat. That was all. He brought me my dinner.

When we were through, he saw the scratch sheet; and he mentioned the name of a horse that had come in first in the first race.

Q. Can you recall the name of the horse? If you can, all right.

A. No; I cannot recall, Mr. McLaughlin.

Q. Now, what was said after Plummer mentioned something about the horse in the first race?

A. Nothing more. He left the table. A few minutes later I called him and asked him if he could take a bet for me on the second race?

Q. What did he say?

A. He said—he looked around the room and said, Yes, he could.

Q. What did you do?

A. I gave him \$2 to win and \$2 to place on this horse in the second race, Busy Whirl, in the second race.

Q. Now, what did Plummer do after you gave him the \$4?

A. Well, I gave him a \$10 bill and said, "Put two to win and two to place."

He took the \$10 bill and went across to the bar and
111 gave it to a man who was then standing at the bar; and that was all Dan did.

Q. Who was the man standing at the bar?

A. I at that time did not know his name. I know only his nickname now.

Q. What is his nickname?

A. Doc.

Q. Just where was he at the bar?

A. There is a bend in the bar, and he was standing just about there.

Q. What was he doing while he was standing there?

A. He was leaning against the bar talking to one or two of the waiters who came up to him.

Q. You say Plummer went up to him?

A. Yes, sir.

Q. What did he do?

A. Doc took the \$10 and went out of the restaurant.

Q. Did you talk to Plummer after Doc went out of the restaurant?

A. About five minutes later Dan came back and gave me the change for my \$10 bill. Gave me \$6.

Q. Did you have any further talk with Dan Plummer after you were given back the change from the \$10?

A. Not until 15 or 20 minutes later.

Q. All right. What happened 15 or 20 minutes later?

112 A. About 20 minutes later, Dan came back. Doc had come in. Dan came over to me at the table and gave me two \$10 bills, and said, "Your horse came in." And asked for \$2 change; and I gave him \$2 change.

Q. Did you have any further talk with Plummer on that date, the 17th?

A. No. We sat around for a little while, and then said we had better leave.

* * * * *

113 Q. Now, did you have occasion to go back to those premises, 416 Tenth Street Northwest, after March 17?

A. Yes, sir.

Q. Can you recall the next date?

A. The 23rd of March.

Q. And when you went back the 23rd of March, did you go alone?

A. No, sir.

Q. Who went with you?

A. Mr. Barrett.

Q. What time did you arrive at 416 Tenth Street on March 23rd?

A. About the same time, 2:00 o'clock.

Q. Now, did you enter the premises?

A. Yes, sir.

Q. What did you do, or what did you see, or what happened, if anything, after you entered the premises on March 23rd?

A. We entered the premises and we again had a scratch sheet. A man who was known to us as Mr. Fish, was in the back of the restaurant, counting some money on a counter. We sat at about the third or fourth table; I have forgotten which one it was, ordered lunch; and Dan came over to us, and—

Q. Who came over?

114 A. Dan.

Q. Is that Mr. Plummer, you mean?

A. Mr. Plummer; yes. Excuse me.

Q. Yes.

A. And he saw us talking, with the scratch sheet. We asked if "Mr. Dodo" had won in the first race, and he said, "No, 'Mr. Himmilee' won."

I then said, "Dan, would you be able to take a bet on the second race for us?"

He said, not at that time. So we finished our lunch, and about 2:35 he came back to our table.

Q. When you say "he," who do you mean?

A. Dan; and sat down at the table with us and said "What is it you wanted to bet on in the second?"

We all looked at our watches, and we figured it was too late in the second. I said, "Dan, I will give you a bet on the third."

So I gave him \$2 to win on a horse in the third race.

Q. And what happened?

A. He took the \$2 and took it over to the counter where there was a man, who, I do not know his name, was talking to Mr. Kopel, at the counter, over his scratch sheet.

Dan took the money over to this man, whose name I do not know, who took the money from him and went out of the restaurant.

115 Q. Now, was the radio playing on that date?

A. I could not tell you on that date. I do not recall.

The COURT. You say you cannot recall whether it was or was not?

The WITNESS. I cannot recall whether it was.

By Mr. McLAUGHLIN:

Q. Now, have you related to us all the occasions that you had been to that premises, 416 Tenth Street Northwest?

A. No, sir. I have been there other times.

Q. Prior to January 7th?

A. Prior to January 7.

Q. I meant after January 7, that you haven't related.

A. There may be one or two times, because we did eat lunch there quite often, whose dates I do not recall; the exact dates.

Mr. McLAUGHLIN. I believe that is all.

* * * * *

150 The COURT. Now, are we speaking of the 17th of March, Mr. McKENZIE?

Mr. McKENZIE. Yes.

By Mr. McKENZIE:

Q. In other words, let me come over here a moment. You are sitting at your table being served; and I will be the waiter.

A. Yes, sir.

Q. You are saying to me, "I want to bet \$2 to win and \$2 to place on Busy Whirl."

A. Yes.

Q. And I am standing here; and you have the money in your hand. As soon as you have finished saying that, do you hand the money to me?

151 A. I think I waited for him to say, "All right," or say something.

Q. You waited for him to what?

A. To acknowledge that he would take the bet.

Q. Did he not say to you, "Lady, I don't take bets on horse races"?

A. No, sir.

Q. And did he not first say, "I will have to see if there is anyone here who will take a bet"?

A. He did not say both those things; no, sir. He said one of them; but not both those statements.

Q. Which one did he say?

A. He said, "I will see."

Q. "If there is anyone here who will take a bet"?

A. He said, "I will see." That is all I remember.

Q. Do you deny he said more than "I will see"?

Mr. McLAUGHLIN. I object to this, Your Honor.

The COURT. I understood you to say defendant Plummer did not say, "I don't take bets on horse racing"; but he did say, "I will see"?

The WITNESS. He did say, "I will see," as I remember.

By Mr. McKENZIE:

Q. Having said that, what did he do?

A. I think he came back to our table and took the \$2. He had been away for a minute; and came back—the \$4, I mean.

152 Q. Before he took your money, did he talk to anyone?

A. I can't recall.

Q. While the defendant Plummer is standing at the table talking to you about this matter, and you have offered him money, and he says to you, "I will see"—or something, whatever it was—did he then turn around to a man rather close to him, by the name of Doc, and say, "Doc, are you going across the street?"

A. Yes, sir.

Q. And then did he turn around; and did you then hand him the money?

A. Yes, sir.

Q. And did he then hand it to Doc?

A. Then he walked across and handed it to Doc; yes, sir.

Q. Now, you testified a few moments ago that you gave the money to the defendant Plummer; and he went to the bar; and there at the bar he gave the money to Doc.

A. Yes, sir.

Q. All right. I asked you just a second ago, if it wasn't a fact that Plummer stood by your table and said to Doc, "Will you go across the street?" And he said, "Yes." And you handed the money to Plummer, and Plummer handed it right to Doc?

A. He had to go across there to the bar, to hand it
153 to him, sir.

Q. Isn't it a fact that Doc was just as close to the table as I have indicated there, less than three feet away from it?

A. No, sir.

Q. And isn't it the further fact that Doc was not at the bar; he was not at the bar at any time?

A. He was at the bar, sir.

Q. Now, you saw Plummer give some money to this Doc?

A. Yes, I did.

Q. And then he came back and you got \$6 change; is that correct?

A. Yes.

Q. Later you saw this Doc return to the restaurant. He left the restaurant, didn't he, after he got the money?

A. Yes; left the restaurant.

Q. And you stayed there; and later Doc returned; isn't that true?

A. Yes, sir.

Q. And then he came to the defendant Plummer and gave him something?

A. Yes, sir.

Q. And Plummer came to you and said, "You have won some money"?

154 A. Yes, sir.

* * * * *

Now, on the 23rd of March, when you got there, you inquired of the defendant Plummer, if a horse named "Mr. Dodo" had won the first race?

A. Yes, sir.

Q. And he told you that a different horse had won it?

A. Yes.

Q. And then did this happen: Did you call him back to the table at a later time?

A. Yes.

Q. Did you ask him if there was anyone there who could take a bet on the second race?

A. I think those were my words; yes, sir.

Q. You and Mr. Barrett were sitting there at that time together?

A. Yes.

Q. Now, that is the second time that you discussed the matter of making a bet in the presence of the defendant Plummer and the witness Barrett?

A. In the presence of defendant Plummer; yes, sir.

Q. And you knew then, did you not, that it was necessary to find out from the defendant Plummer if he knew of anyone who would take a bet?

A. No, sir. I don't understand what you mean.
155 Maybe I don't understand what you mean.

Q. You didn't ask him to take a bet, did you?

A. Well, I put it that way.

Q. You did say, "Is there anyone here who can take a bet?"

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. You didn't say, "Will you take a bet?" You didn't say that; did you?

A. I may have said; or, "Can you"; yes, sir.

Q. Which did you say? You testified that you stated, "Is there anyone here who will take a bet?"

Now, did you say that, or did you say, "Will you take a bet?"

A. I may have added something to that. I did say, "Is there anyone here?"; yes, sir.

Q. Well, if you added something to it, can you remember?

A. I said, I may have said, "or can you take it?"

Q. Well, is it your testimony that you did say, "or can you take it?" Do you so testify now?

A. I am not sure of it.

Q. Then, after you made that request, isn't it a fact that Plummer looked about and told you, "There is no one in here now who can take a bet"?

156 A. Yes, sir.

Q. Well, from that, you knew, did you not, that he wasn't going to take it?

Mr. McLAUGHLIN. I object to this, Your Honor.

The COURT. She can answer, if she can.

The WITNESS. I didn't know, sir, no; because about five minutes later, he came over and took my bet in the third.

By Mr. McKENZIE:

Q. You wanted to bet a horse in the third race called "Unapproachable"?

A. Yes, sir.

Q. May I ask if you selected that horse because you had some sort of a tip on him; or that was just sort of hunch bet?

The COURT. She need not answer that.

Mr. McLAUGHLIN. I object to that, if Your Honor please.

The COURT. She need not answer that.

Mr. McKENZIE. Perhaps I should withdraw that question.

The COURT. All right, you may withdraw it.

By Mr. McKENZIE:

Q. When you decided you wanted to make a bet on the horse "Unapproachable," then the defendant Plummer went to this man, F. B.; did he not?

A. The defendant Plummer came over to our table?

Q. Yes; he came to our table. You asked him to;
157 did you not?

A. Not this last time; no, sir.

Q. Well, when you asked him if he could get a bet up on a horse in the second race; and he said it was too late——

A. Yes, sir.

Q. You didn't tell him to stay away from your table; did you?

A. I gave no indication. I said, "All right."

Q. He came back; and when he came back, you said that you liked the horse, "Unapproachable"?

A. Yes, sir.

Q. And you gave him \$2 and asked him to get it up on the nose of "Unapproachable"?

A. Yes, sir.

Q. And then he went over to F. B.; that is correct, isn't it?

A. Yes, sir.

Q. And he gave the money to F. B.?

A. He had to interrupt a conversation of F. B.'s with Mr. Kopel.

Q. Yes; he interrupted a conversation.

A. Yes, sir.

Q. And that was how that bet——

A. I beg your pardon?

Q. That is how that bet was put up for you?

158 A. Yes, sir.

* * * * *

326 WALTER C. PLUMMER, a defendant herein, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McKENZIE:

* * * * *

327 Q. Calling your attention to the 17th day of March 1949, on which date the witnesses Barrett and Wildrick stated that in Hammel's Restaurant, you made a bet for Mrs. Wildrick. Did that happen?

A. Yes, it did—not in the way that they said it did, though.

Q. Will you tell the Court and the jury the circumstances surrounding the transaction that occurred on the 17th of March 1949?

A. I will tell it the best I can.

I know this couple came in. The lady, she said she had a toothache, and she wanted to know if I had a remedy for a toothache, or something soft to eat, and I said, "I don't have any remedies, but I can give you something nice and soft so it wouldn't press on your tooth to eat."

So I recommended something; what it was, I don't remember now, something on the luncheon specials, and we got a little friendly.

Well, I had seen them in there before.

In the meantime, she pulls this scratch sheet out, opens it up on her lap, and she said, "Do you know who won a
328 certain race?"

I said, "Yes, I believe I did hear that one."

The radio was on. You can't help but hear it when it is on, when you work in that part of the room. And I told her.

She wanted to know if Mr. Dodo—I believe it was, won the race, and I told her, No, it was somebody, Mr. Somebody else, and I told her who it was.

I went on around to other people; I went in the kitchen and brought their food out, and their beer. They had beer to drink with their lunch, and she says, "Will you come back in a few minutes," and I did, and she says, "I would like to play this horse here," she said. "Can you play it for me?"

I says, "No, I can't play it for you because I am not a book-maker. There is some customer around here who can get it up for you. And as a favor, I will ask him," which I did, and I asked this fellow Doc, this mysterious Doc, that they don't know who he is—I know who he is. He is a T. B. patient down in North Carolina, and he was up here on a vacation to see his

family, and I happened to ask Doc if he knew where he could place a bet for me for this woman as a favor, and he says, "Yes," he said, "I think I can."

He says, "Get the money for me first, because I haven't got any money to spare for anything like that," so I did. I got from her a \$10 bill.

He took the \$10 bill and he went out of the restaurant, 329 and where he went, I don't know. He came back in about, oh, I don't know, eight or nine minutes, maybe ten minutes, and he gave me \$6 in change, and he says, "Here is the lady's change," and I gave her the change.

He went out again, and came back in about 20 minutes, and he says, "That lady's horse won. Here is two \$10 bills, but tell her the total of the bet is \$18, and bring her change, because I had to give the man \$2 change for the two tens," you know, to make the even \$18, which I did.

And that was the transaction on the 17th of March.

* * * * *

Q. The testimony is that on the 23rd of March, Mr. Barrett and Mrs. Wildrick again came into Hammel's Restaurant and they again asked if you could—or at least they said something to you about betting on a horse called Unapproachable. Do you have any recollection of that transaction?

A. No—Wait a minute—Unapproachable? Yes, I do. Yes, I do.

Q. In other words, it is a fact, is it not, that Mr. Barrett and Mrs. Wildrick twice came to the restaurant and 330 spoke to you about getting a bet?

A. Yes.

Q. The second time was concerning the horse Unapproachable. Now, will you tell the Court and jury what happened concerning that matter?

A. Well, I told them I couldn't take any bets. I said, "There is nobody around here that can take a bet. There are no customers in here that I can ask personally," people that I know personally. I told them I couldn't take no bet, and I didn't take their bet on Unapproachable, because I am not a book-

maker, and I certainly haven't got the money to pay up for it myself.

Q. On that day, on the second occasion, there was testimony on the part of Mrs. Wildrick, that she gave you some money, and that you gave that to a man whom she described as F. B.

Did you take money from her that day for the purpose of making a bet?

A. Yes.

Q. Was that for the purpose of accommodating her?

A. That is right.

Q. And did you find someone who would take that bet some place and make it for her?

A. Yes; but it wasn't the F. B. that she said it was, because I don't know any F. B., and it wasn't the man
331 she said I talked to at all.

It was a lady I asked to do that for me that day, and not a man. She is no bookmaker either, because she works in a store right near there.

Q. The witness Barrett testified that on a third occasion he came there alone, and on that day, after he had eaten his meal, he gave you a \$5 bill to pay for the meal.

A. Yes, sir.

Q. And he asked you to take the change, amounting to \$3, and see if you can give him a bet on a horse named Plucky Marge in the first race at the Fair Grounds. That happened, did it not?

A. Yes, sir; but not the way he said it, because he asked me to—could I get the bet up, and I told him, No. I looked out the window to see if there was anybody outside that might know, and he said, "That is all right. Just keep the money. If somebody comes by, give it to him. If they don't come by, that is still O. K."

And I gave him 30 cents change out of the \$5 bill, because his lunch amounted to \$1.70, and he wanted to bet a dollar across the board on this horse.

Now, he left that money there and that money never did get to anybody. He said, "It is O. K. if somebody comes around, give it to them, O. K. If not, O. K."

Q. Now, Mr. Plummer, what are your hours at Hammel's?

332 A. I go to work at 11 o'clock. I work until 3.

Q. Three in the afternoon?

A. Yes, sir. I go back at 5. I go back before 5. I go back about twenty minutes of 5, and put the laundry away, and I go off anywhere from 9:30 to 10 o'clock.

* * * * *

420 COURT'S CHARGE TO THE JURY

* * * * *

425 The first count of the indictment charges that during the period from about September 3, 1948, to about March 25, 1949, within the District of Columbia, the defendants Kopel and Plummer, knowingly, feloniously, and unlawfully did set up and keep a certain gaming table for the purpose of gaming; that is to say, for the purpose of betting and wagering money and property upon the results of horse racing.

You are to concern yourself with the guilt or innocence of the defendant Plummer only insofar as count 1 is concerned. In other words, Mr. Kopel is not before you at this time. That count, insofar as he is concerned, has been disposed of by the Court.

The pertinent provision of the District of Columbia law provides:

426 "Whoever shall in the District of Columbia set up or keep any kind of gaming table or gambling device, adapted, devised, and designed for the purpose of playing any game of chance for money or property shall be punished as prescribed by the statute."

Under this first count, in order for you to find the defendant Plummer guilty, the Government must prove beyond a reasonable doubt the following elements:

(1) That the Defendant Plummer knowingly, feloniously, and wrongfully set up or kept

(2) a gaming table for the purpose of gaming and

(3) that this gaming table was set up in the District of Columbia at the time alleged.

The essence of this offense is the furnishing of facilities for gaming activities. Gaming or gambling is the risking of one's money or other property on an event, chance, or contingency in the hope of realization of gain. Facilities are not limited to physical means or devices.

I will repeat: Facilities are not limited to physical means or devices. A facility is anything that promotes the ease of any action, operation, transaction, or course of conduct or opportunity, as, for example, where a person holds himself out for the purpose of receiving bets. He provides facilities for gambling, even though he be without any physical equip-
 427 ment, such as the table or the like. It is not necessary that it be shown that gaming actually took place, or that money actually passed, but merely that facilities, as I have defined them, for gaming, were furnished.

If you find that the defendant Plummer furnished gaming facilities on only one occasion, that is enough to constitute setting up or keeping, under the statute.

The term "gaming table" as used by the law, is not limited to the ordinary mechanical definition of tables, but includes any game or gambling device set up and kept and designed for the purpose of playing any game of chance for money or property to which the public may resort to bet or wager money or property.

You will have noted that the indictment uses the terms, "knowingly, feloniously, and unlawfully."

Knowingly, as used here, means simply consciously or on purpose. Feloniously means with criminal intent or with intent to commit the offense charged. Unlawfully is self-defining. It means contrary to law, illegally, or wrongfully.

Thus, if you find that the Government has proved beyond a reasonable doubt that the defendant Plummer knowingly, feloniously, and unlawfully, as I have defined those terms, provided in the District of Columbia, during the time alleged on one or more occasions, the facilities for a member of the public to bet or wager money on the outcome of a horse race, then you may find the defendant Plummer guilty under Count 1.

428 However, if you find that the Government has failed to prove beyond a reasonable doubt any one or more

of the essential elements of the defense which I have enumerated, then you must find the defendant not guilty as to Count 1.

Count 2 of the indictment has been disposed of by the Court, and is not for your consideration as to either the defendant Kopel or the defendant Plummer.

That brings us to Count 3.

Count 3 of the indictment charges that on or about March 24, 1949, within the District of Columbia, the defendants Kopel and Plummer did unlawfully bet and gamble and wager money upon the result of a horse race, that is to say, that the defendants bet \$3 with one Wilfred Barrett on the result of a horse race.

Here, and in the case of Count 1, you are not to concern yourself with the defendant Kopel. That count has been disposed of as to him.

You do have for your consideration the guilt or innocence of the defendant Plummer as to this, the third count of the indictment.

The pertinent provision of law on which this count is based, reads as follows:

"It shall be unlawful for any person to bet, gamble, or make book or pools on the result of any trotting or running race of horses."

429 The elements which the Government must prove beyond a reasonable doubt in order for you to find the defendant guilty under Count 3—I am speaking of Defendant Plummer only—are:

(1) That he, Plummer, bet money on the result of a horse race,

(2) that the bet was made with Wilfred Barrett,

(3) that the bet was made at the time and place alleged in the indictment.

The words "bet, gamble and wager," as used here, are synonymous. To gamble is to risk one's money or other property on an event, chance or contingency, in the hope of the realization of gain.

To wager or bet is for two parties to contract that a sum of money or other things shall be paid, or delivered to one of them on the happening or not happening of an uncertain event. Thus, both the person who takes bets on horses on his own account or on behalf of someone else, and the one who places the individual bet are wagering or betting or gambling therefore, on the outcome of the race.

If you find that the Government has proven beyond a reasonable doubt that the defendant Plummer at the time and place alleged, did accept from the witness Barrett \$3 as a bet on the outcome of a horse race, then you may find the defendant Plummer guilty under Count 3. However, if
430 you find that the Government has failed to prove beyond a reasonable doubt any one or more of these essential elements of the event, then you must find the defendant Plummer not guilty as to Count 3.

We come now to Count 4 of the indictment.

Count 4 of the indictment charges that the defendant Kopel, during the period from about September 3, 1948, to about March 25, 1949, within the District of Columbia, did knowingly permit on premises of which at that time he had possession and control, that is to say, on premises 416 Tenth Street Northwest, in said District of Columbia, a gambling table to be set up and used for the purpose of gaming, that is to say, for the purpose of betting and wagering of money and property upon the results of horse races.

The pertinent provision of the law on which this count is based reads:

"Whoever in the District of Columbia, knowingly permits any gaming table to be set up or used for the purpose of gaming in any house or other premises to him belonging, or by him occupied, or of which at the time he has possession and control, shall be punished as prescribed by the statute."

The essential elements of this count which the Government must prove beyond a reasonable doubt in order for you to find the defendant Kopel guilty under Count 4 are:

* * * * *

439 Has either counsel anything to add?

Mr. McKENZIE. I would like to approach the bench.

The COURT. Yes, sir.

(Whereupon, counsel for all parties approached the bench and the following proceedings were had out of the hearing of the jury:)

Mr. McKENZIE. I would ask the Court with respect to the defendant Plummer, in view of the fact there are numerous counts for the jurors to consider—I was going to ask that with respect to Count 1, you again inform the jury that in that count, the essential elements are feloniously, knowingly, and unlawfully; and as to Count 3, the elements of feloniously and knowingly do not appear, that they are in one count but not in the other.

I think they should have that in their minds.

The COURT. I wouldn't go back to that. I have enumerated those specifically, I hope, and clearly.

Is that the only thing you have?

Mr. McKENZIE. Yes. You were going to instruct them on the possible verdict.

The COURT. Yes. I thought I had better do that last, as to the possible verdict. I deliberately waited for that.

Mr. NEWYER. As to Count 4 in Your Honor's charge with respect to the requirement that Kopel knowingly either had knowledge, actual or constructive, and knew, or as a
440 reasonably prudent person would or should have known—we object to that, and as to Count 5 on the question of the lottery, we object to that portion of Your Honor's charge on the ground that the evidence as to that count is not sufficient to show that Exhibit 9 referred to in Your Honor's charge was a lottery slip, or used in connection with numbers bets. There is no evidence to establish that.

The COURT. Have you anything, Mr. McLaughlin?

Mr. McLAUGHLIN. No, Your Honor.

(Whereupon, counsel resumed their places at the trial table, and the following proceedings were had in open court:)

* * * * *

1 In the United States District Court
For the District of Columbia

Holding a Criminal term

April Term, 1949

Grand Jury Original, Criminal No. 457-49, Vio. Secs. 1502,
1504, 1505 and 1508, Title 22, D. C. Code

UNITED STATES OF AMERICA

v.

HARRY S. KOPEL, WALTER C. PLUMMER

Filed in open court, Apr. 8, 1949. Harry M. Hull, Clerk.
The additional Grand Jury empaneled and sworn in May
1948, charges.

During the period from about September 3, 1948, to about
March 25, 1949, within the District of Columbia, Harry S.
Kopel and Walter C. Plummer, knowingly, feloniously and
unlawfully did set up and keep a certain gaming table for the
purpose of gaming, that is to say, for the purpose of betting
and wagering money and property upon the results of horse
races.

SECOND COUNT

During the period from about September 3, 1948, to about
March 25, 1949, within the District of Columbia, Harry S.
Kopel and Walter C. Plummer, knowingly, feloniously and
unlawfully did set up and keep a certain place for the purpose
of gaming, that is to say, for the purpose of betting and wager-
ing of money and property upon the results of horse races.

THIRD COUNT

On or about March 24, 1949, within the District of Colum-
bia, the said Harry S. Kopel and the said Walter C. Plummer
did unlawfully bet and gamble and wager money upon the
result of a horse race, that is to say that the said Harry S.
Kopel and the said Walter C. Plummer then and there un-
lawfully did bet and gamble and wager a said sum of money,

to wit, Three Dollars, with one Wilfred D. Barrett, on the result of a certain horse race.

2

FOURTH COUNT

During the period from about September 3, 1948, to about March 25, 1949, within the District of Columbia, Harry S. Kopel knowingly did permit, on premises of which at that time he had possession and control, that is to say on premises 416 10th Street, N. W., in said District of Columbia, a gambling table to be set up and used for the purpose of gaming, that is to say, for the purpose of betting and wagering of money and property upon the results of horse races.

FIFTH COUNT

On or about March 25, 1949, within the District of Columbia, said Harry S. Kopel did have in his possession, unlawfully and knowingly, certain tickets, certificates, bills, slips, tokens, papers, and writings, used and to be used, and adapted, devised and designed for the purpose of playing, carrying on and conducting a certain lottery, commonly known as and called the numbers game.

GEORGE MORRIS FAY,
*Attorney of the United States in
and for the District of Columbia.*

A True Bill.

LIONEL V. MURPHY,
Acting and Deputy Foreman.

3 United States District Court for the District
of Columbia

Criminal No. 475-49—Charge: Vio. Secs. 1504 and 1508,
T. 22. D. C. Code.

UNITED STATES

vs.

WALTER C. PLUMMER, DEFENDANT

Filed Apr. 15, 1949. Harry M. Hull, Clerk.

PLEA OF DEFENDANT

On this 14 day of April 1949, the defendant Walter C. Plummer, appearing in proper person and by his attorney Myron Ehrlich, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

By direction of

HENRY A. SCHWEINHOUT,
Presiding Judge.

HARRY M. HULL,
Clerk.

By JAMES D. MORGAN,
Deputy Clerk.

Present:

United States Attorney.

By WILLIAM HITZ,
Assistant United States Attorney

RALPH MINIER,
Official Reporter.

7 United States District Court for the District
of Columbia

Criminal No. 475-49—No. 1 Vio. Secs. 1502, 1504, Charge 1505
and 1508, Title 22, D. C. Code. No. 2 Vio. Secs. 1504, 1508,
Title 22, D. C. Code

UNITED STATES

vs.

No. 1 HARRY S. KOPEL, No. 2 WALTER C. PLUMMER,
DEFENDANTS

Filed Dec. 1, 1949. Harry M. Hull, Clerk.

On this 30th day of November 1949, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon the said jury upon their oath say that the defendant

Harry S. Kopel is not guilty and the defendant Walter C. Plummer is guilty on Counts One and Three of the indictment.

The case is referred to the Probation Officer of the Court and the defendant Walter C. Plummer is permitted to remain on bond pending sentence; and thereupon defendant Harry S. Kopel is discharged.

By direction of

RICHMOND B. KEECH,
Presiding Judge Criminal Court #4.

HARRY M. HULL,

Clerk.

By PAUL A. ROSEN,

Deputy Clerk.

Present:

United States Attorney.

By ARTHUR McLAUGHLIN,

Assistant United States Attorney.

DAVID SPATZER,

Official Reporter.

12 United States District Court for the District of
Columbia Division

Criminal No. 475-49

UNITED STATES OF AMERICA v. WALTER C. PLUMMER

Filed Jan. 4, 1950. Harry M. Hull, Clerk.

On this 23rd day of December 1949 came the attorney for the government and the defendant appeared in person and by counsel, T. Emmett McKenzie, Esquire.

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Vio. of Secs. 1504, 1508, Title 22; D. C. Code, as charged in counts one and three and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four (4) Months to Twelve (12) Months.

It is adjudged that the execution of this sentence be and is hereby suspended, and that the said defendant be and is hereby placed on probation in charge of the Probation Officer of the Court for a period of Two (2) Years.

R. B. KEECH.

United States District Judge.